

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CRIMINAL ACTION NO.
VS.	)	
	)	3:07-CR-281-G
GERARDO MONTEMAYOR,	)	
	)	ECF
Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

Before the court is the motion of the defendant, Gerardo Montemayor (“the defendant” or “Montemayor”), for revocation or amendment of the magistrate judge’s detention order pending judicial proceedings (“defendant’s motion”). For the reasons set forth below, the motion is denied.

**I. BACKGROUND**

The defendant was indicted on September 25, 2007, for two drug trafficking offenses and two related firearm offenses. *See generally* Indictment. On October 26, 2007, Magistrate Judge Stickney, after considering the facts and circumstances surrounding the offense conduct, ordered that the defendant be committed to the

custody of the Attorney General pending further proceedings. *See generally* Amended Detention Order. The evidence presented at the detention hearing on October 25, 2007, showed probable cause that Montemayor committed the crimes charged involving large quantities of narcotics and firearms. *Id.* Pursuant to 18 U.S.C. § 3145(b), the defendant filed the instant motion on November 30, 2007.\*

## II. ANALYSIS

In the case before the court, the defendant argues that the detention order should be revoked or amended because the evidence presented “rebutted the allegation of [the defendant’s] risk of flight.” *See* Defendant’s Motion ¶ 3. Alternatively, the defendant moves for release pursuant to the conditions outlined by 18 U.S.C. § 3142(c). *Id.* ¶ 4. In response, the government argues that Montemayor poses a danger to the community and opposes the release of the defendant. *See generally* Government’s Response to Defendant’s Motion for Revocation or Amendment of the Detention Order (“government’s response). To support its claim, the government notes that at that time he was stopped for a minor traffic offense, the defendant possessed a large quantity of marijuana and a semi-automatic pistol in his automobile. *Id.* at 3; *see generally* Detention Hearing Transcript, *attached to* Defendant’s Motion. A subsequent search of the defendant’s residence uncovered

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\* 18 U.S.C. § 3145(b) provides that “a person ordered detained by a magistrate judge . . . may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order.”

seventeen firearms, more marijuana, a quantity of cocaine and methamphetamine, approximately \$23,000 in cash, and other evidence of a large-scale drug distribution ring. *Id.* Furthermore, after his initial arrest and while out on bond, the evidence presented at the detention hearing indicates that Montemayor then continued his involvement with drug trafficking and firearms. *See* Government's Response at 4.

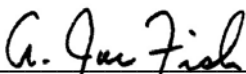
Having reviewed the pleadings before it and considered the evidence presented at the detention hearing, the court finds that the defendant may indeed pose a danger to the community based on his prior conduct. Montemayor's involvement with drug trafficking and firearms, as well as the evidence showing his continued involvement with drugs and guns, all indicate that the defendant is both a flight risk and a danger to the community. The court therefore concludes, pursuant to 18 U.S.C. § 3143(a)(1), that there is not clear and convincing evidence that defendant does not pose such a danger. Accordingly, the court concludes that Magistrate Judge Stickney did not err when he entered the subject detention order and, thus, the defendant's motion for revocation or amendment should be denied. Alternatively, the court, after considering the factors listed in 18 U.S.C. § 3142(g), does not conclude that a conditional release under 18 U.S.C. § 3142 is appropriate.

### III. CONCLUSION

For the reasons stated above, the defendant's motion for revocation or amendment of the detention order is **DENIED**.

SO ORDERED.

December 13, 2007.

  
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A. JOE FISH  
Senior United States District Judge